

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC,

Plaintiff,

Civil Action No: 12 CIV 0095  
(RJS)

- against -

REDIGI, INC. ,

Defendant.

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**DECLARATION LARRY RUDOLPH (aka Lawrence S. Rogel)  
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, LARRY RUDOLPH (aka Lawrence S. Rogel), pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury, as follows:

1. I am Chief Technical Officer and a founder of ReDigi Inc.
2. I received my PhD in Computer Science from the Courant Institute of Mathematical Science, NYU in 1981. After a post-doc at University of Toronto, I joined the Computer Science faculty at Carnegie-Mellon University and then the Hebrew University, Jerusalem, Israel.
3. After attaining the rank of full professor, I moved to the Massachusetts Institute of Technology as a Principle Research Scientist. After 12 years, I joined VMWare as a Senior Staff Engineer in 2007.
4. In 2009, I co-founded a startup which eventually became ReDigi Inc., where I serve as the CTO. I also remain an Affiliate for the MIT Lab for Computer Science and Artificial Intelligence and frequently teach Computer Systems Engineering (6.033). This course covers the detailed organization of computer file systems, Cloud Computing, and file transfer protocols.

WHAT REDIGI DOES

[REDACTED]

5. After signing up for a ReDigi account, accepting ReDigi's terms of service, downloading and installing ReDigi's proprietary "Media Manager" software ("Media Manager"), and logging into the account using secure login information, [REDACTED] [REDACTED] an eligible music file ("Eligible File") from the user's computer to the user's personal storage locker ("Cloud Locker") in ReDigi's cloud-based storage system (the "ReDigi Cloud"). "Eligible File(s) solely refers to the original source file purchased from iTunes by the user as determined by the Media Manager.

[REDACTED]

7. From the ReDigi website, a user can download, stream, or offer for sale Eligible Files in their Locker. A user can cancel a sale offer, order or buy a music file, purchase credit, browse inventory, check account, [REDACTED]

8. The ReDigi Server maintains the database, serves as the backend to the website, accepts file migrations, file store actions from the Media Manager, [REDACTED]

[REDACTED]

9. The only Eligible Files are ones legally acquired from iTunes, thereby excluding music tracks copied from CDs, or downloaded from other online vendors or file sharers, or obtained

from any other source. Only one instance of an Eligible File can ever be sold on ReDigi.

10. Before an Eligible File [REDACTED] Cloud Locker, the user must agree to permit the Media Manager to delete all other copies stored on the user's computer, attached storage and synchronization devices. The user must delete any and all copies stored in any external cloud storages.

11. After the installation of the Media Manager, a music file downloaded by iTunes is automatically stored in the user's Cloud Locker. Afterwards, a copy from the Cloud Locker may be downloaded to the user's computer. The file remains in the user's Cloud Locker provided it passes the validation tests by the ReDigi Server. There is an option to turn off this automatic service.

12. A user can do the following actions with an Eligible File in the Locker: offer it for sale, privately listen to it by "streaming", download it leaving the Eligible File in the Locker, or delete it from the Locker.

**(B) The sale process**

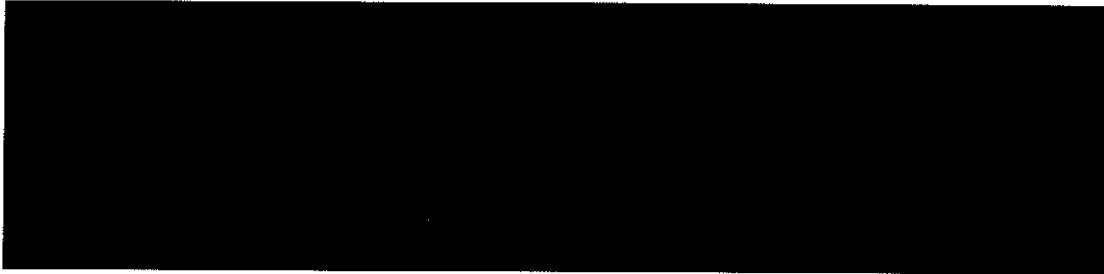
13. A user can choose to offer an Eligible File stored in his or her Locker for resale to other ReDigi users through the ReDigi marketplace. *No copy of the file in the ReDigi Cloud is made when the Eligible File is sold by one ReDigi user to another ReDigi user.*

14. After such a sale, the selling user no longer has any access to the file sold. The Eligible File is in the purchasing user's Locker where he or she can continue to store, listen, offer for sale, download, or delete it.

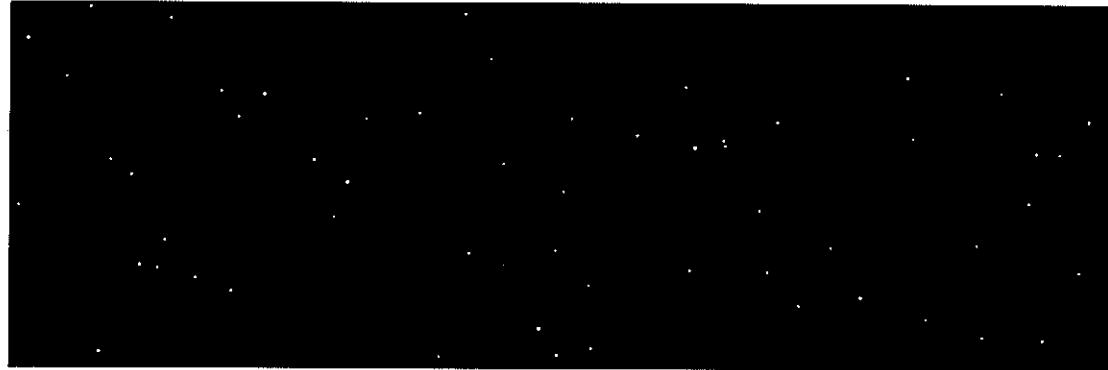
15. ReDigi earns a transaction fee on the sales.

16. For each Eligible File in the user's Cloud Locker that has been offered for sale or sold, the Media Manager automatically and continually scans for instances of copies of said Eligible File. If a copy of such Eligible File is detected, the user is prompted to authorize the deletion of such file from that device. If the user fails to provide such authorization, his or her account is suspended.

(C) Streaming of 30 second clips and linking to artwork



HOW IT WORKS



(B) Locker storage

20. The advent of inexpensive, nearly pervasive, highspeed, and continually accessible internet access has given rise to the rental of network storage, sometimes referred to as cloud storage.

21. In addition to the cloud storage locker for mp3 and mp3-type aac (collectively "MP3") files ReDigi (a) offers a used digital music marketplace, and (b) provides technology and has adopted a business model which prevents users from maintaining duplicates, even on their home computers and connected devices, of recordings deemed eligible for ReDigi's services.

22. The locker is a conceptual idea involving a collection of actual files. Each file is assigned a unique number as the name under which it is accessed in the ReDigi Cloud. An Eligible File can be accessed only by its owner. Ownership is signified by database records which associates a file with a particular user. The database record can be thought of containing a “key” to the file in the user’s Cloud Locker. The Locker, file names (pointers to files), ownership, and other details are realized through the values stored in the database.

23. The Cloud Locker can be thought of as the “final resting place for unwanted music files.” A user might not want to offer a particular song for sale, but no longer wants it to take up space on his or her local computer. ReDigi is also a “rebirth” place where the purchased file can reside before being downloaded by the new owner. It is, to the best of our knowledge, unique in that all the songs in the locker have passed verification. Many cloud storage systems tell their users to only upload items they own but, unlike ReDigi, offer no mechanism for verifying such ownership.

24. The Eligible File is the only instance of that unique file in the ReDigi Cloud. The entire ReDigi cloud may contain multiple, unique copies of the same recording, although each will have certain identifiable differences in the metadata, as each was uploaded by a different user.

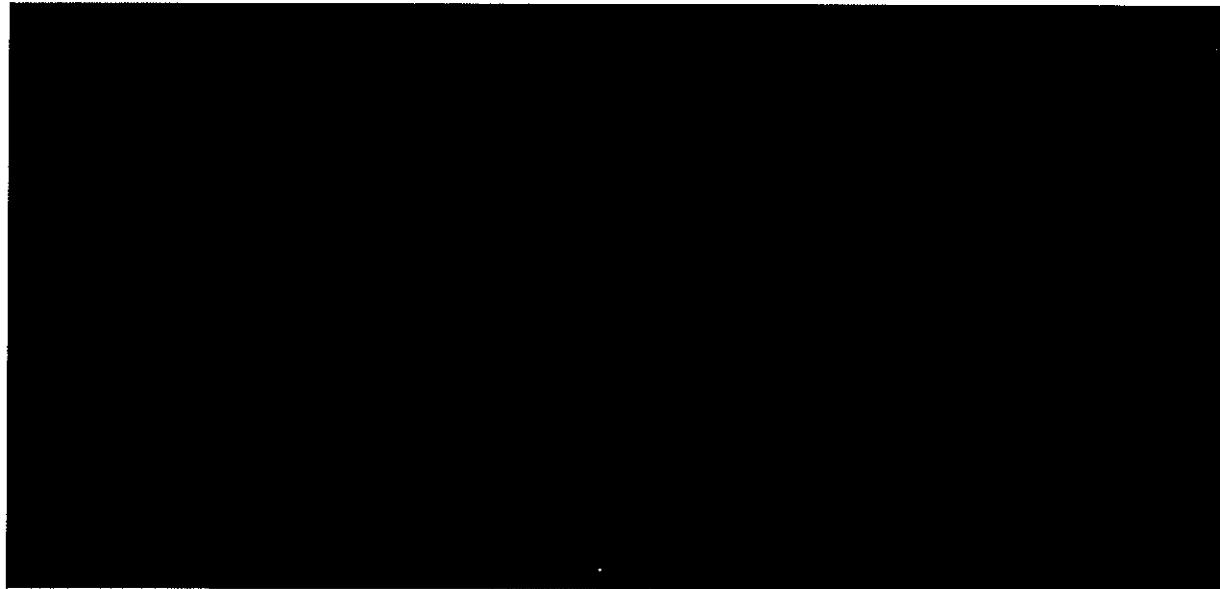
25. There are three ways on ReDigi to get an Eligible File into a user’s Cloud Locker:

[REDACTED] from a user’s computer, [REDACTED] and transfer ownership between two ReDigi users. None of the ways involves copying or reproduction. No copy or reproduction of the Eligible File is made during the [REDACTED]

26. An Eligible File [REDACTED] the ReDigi Cloud using a [REDACTED], in part, on very old techniques employed when storage was very limited.

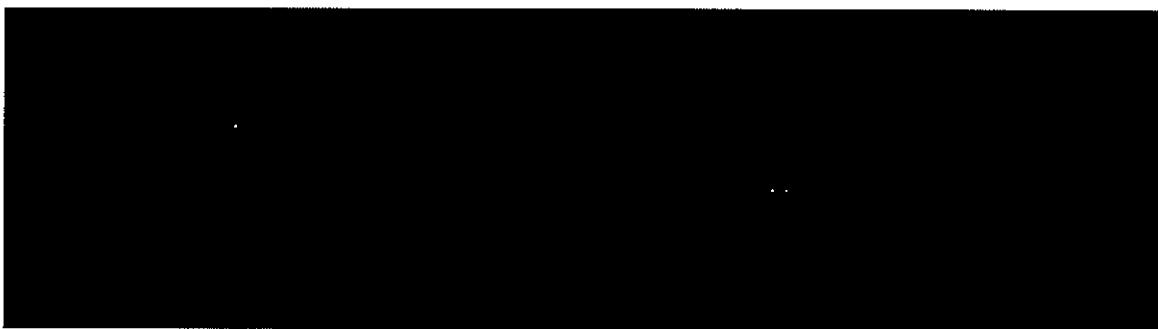






(D) Offering music for sale or to purchase

33. The ReDigi marketplace only allows songs to be offered for sale that meet two criteria. First, they must be in a user's locker. Second, they must be the only instance of the file that the user has. The marketplace also allows a user to place an offer to purchase a song. Such a purchase request is either satisfied immediately or is queued until some other user offers that song for sale. Media Manager communicates with the ReDigi server to synchronize its local information with the centralized information on the ReDigi database. A user may offer one of the songs for sale, in which case it can no longer be downloaded or streamed. The user may also at any time choose to cancel the offer for sale. In this case, it could then be downloaded, kept in storage, or re-offered for sale at a later time.

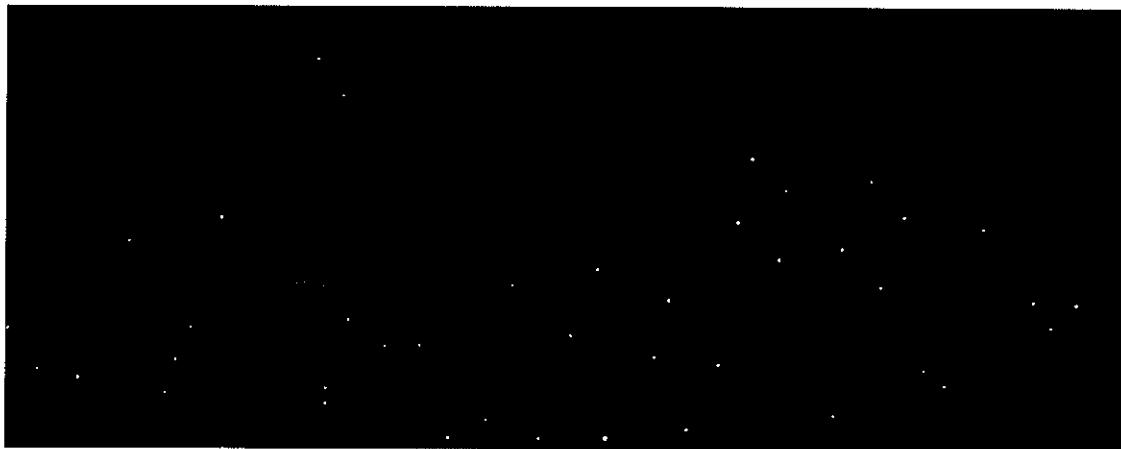


35. The purchase and sale orders for a recording are organized on a first-in first-out basis.

It may be the case that there are no outstanding orders, in which case the offer for sale is placed at the end of a queue of offers for sale for this particular recording. Database records are used to maintain the desire-to-purchase and the offer-to-sell queues.

**(E) Performing a transfer of ownership**

36. The transfer of ownership is accomplished without making a copy of the Eligible File recording. There is never a time when both seller and buyer have access to, or ownership of the Eligible File.



 At no point is the copyrighted music file touched. Money or credit is transferred between the buyer and the seller, and a log of the transaction. These transfers happen simultaneously with the transfer of ownership. They are all part of the atomic transaction.

**(F) Violations**

37.   
  


[REDACTED]

38. Whenever Media Manager finds a file matching a Eligible File that is for sale or has been sold, it signals a "violation", and requires the user to delete the file from the client or delete it from the locker (and cancel any pending offer for sale); the user's failure to comply would mean suspension of the user's account.

[REDACTED]

The user is [REDACTED]  
requested to first delete the file from the cloud service. [REDACTED]

[REDACTED] and demands the user delete the [REDACTED]

[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 20, 2012 in Cambridge, Massachusetts.

  
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LARRY RUDOLPH (aka Lawrence S. Rogel)  
July 20, 2012